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No.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

LOUIS N. RITTEN & CO.,
Petitioner,

v.

THE COMMISSIONER OF REVENUE,
STATE OF MINNESOTA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

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QUESTIONS PRESENTED

I.

WHETHER MINNESOTA'S INCOME TAX ON INTEREST INCOME FROM U.S. GOVERNMENT OBLIGATIONS VIOLATES 31 U.S.C. 742 AND, THEREFORE, THE SUPREMACY AND BORROWING CLAUSES OF THE FEDERAL CONSTITUTION.

II.

WHETHER PETITIONER, A COMMODITIES FUTURES BROKER, WAS ENGAGED EXCLUSIVELY IN INTERSTATE COMMERCE AS DEFINED BY THIS COURT IN OZARK PIPE LINE v. MONIER, 266 U.S. 555, 45 S.Ct. 184, 69 L.Ed. 439 (1925) AS ITS LOCALIZED ACTIVITIES CONSTITUTED THE MEANS AND INSTRUMENTS BY WHICH IT CONDUCTED ITS INTERSTATE BUSINESS.

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PRAYER

The Petitioner, LOUIS N. RITTEN & CO., respectfully prays that a Writ of Certiorari issue to review the Judgment and Order entered by the Minnesota Supreme Court on May 21, 1982.

OPINION BELOW

The Opinion of the Minnesota Supreme Court, May 21, 1982, reported at 319 N.W.2d 421-424, is attached hereto and appears as Appendix A. No rehearing was sought.

STATE OF JURISDICTION

The jurisdiction of this Honorable Court is invoked under 28 U.S.C. 1257(3), and this Petition for a Writ of Certiorari has been filed within the time permitted by law, within 90 days of the decision of the Minnesota Supreme Court on May 21, 1982.

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, section 8, clauses 2 and 3, of the United States Constitution provides "Congress shall have the Power";

"To borrow Money on the credit of the United States."

"To regulate Commerce with foreign nations, and among the several States and with Indian Tribes."

Article VI, clause 2 provides:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the land."

STATUTORY PROVISION INVOLVED

Title 31, Section 742, United States Code, states:

> Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, except nondiscriminatory

franchise or other nonproperty taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes.

STATEMENT OF THE CASE

Petitioner sought a refund for $15,958.26 Minnesota income taxes paid on interest income from United States obligations on the ground it was exclusively engaged in interstate commerce within the meaning of the United States Constitution. The Court rejected Petitioner's commerce clause argument and held the Petitioner was not entitled to the refund because (1) inclusion of interest on United States obligations does not violate 31 U.S.C. §742 because the Minnesota income tax is a "nondiscriminatory franchise or other nonproperty tax

in lieu thereof" (319 N.W. 2d 421, 422-423, N.1.), and, (2) Petitioner was not engaged in exclusively interstate commerce since its "local" interstate activities were not "ancillary" to its interstate activity but at the "heart of" its business.

The commerce clause issue was raised by Petitioner in the Minnesota Supreme Court. The claimed conflict between 31 U.S.C. §742 and the Minnesota tax was an issue decided by the Minnesota Supreme Court in footnote 1 of its opinion, supra.

REASON FOR GRANTING THE WRIT

I.

THE DECISION BELOW IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT AND THE FEDERAL QUESTION IS SUBSTANTIAL.

This term the Court granted review in three other cases involving 31 U.S.C. §742: (1) No. 81-1613, Memphis Bank & Trust Co. v. Garner; (2) No. 81-1717, American Bank and Trust Co. v. Dallas County, and (3) No. 81-1834, Bartow County Bank v. Bartow County Board of Trustees. These cases concern state tax laws claimed to violate Federal law (31 U.S.C. §742) and the Federal Constitution as indirect taxation of Federal debt obligations. This case concerns a direct tax laid upon "interest income from United States government obligations." (319 N.W.2d 421 at 422) And, the tax is discriminatory as it applies only to corporations not "engaged exclusively in interstate commerce."

At least since McCulloch v. Maryland, 17 U.S. 316, 4 Wheat. 316, 4 L.Ed. 579 (1819), this Court has never doubted that debt obligations of the Federal government are immune from state taxation. At various times the Court has attributed this exemption to policies underlying the borrowing clause and the supremacy clause. This Court said, in Home Savings Bank v. DesMoines (1906) 205 U.S. 503, 513, 51 L.Ed. 901, 27 S.Ct. 571:

> The State cannot by any form of taxation impose any burden upon any part of the national public debt. The Constitution has conferred upon the Government power to borrow money on the credit of the United States, and that power cannot be burdened or impeded or in any way affected by the action of any State. This principle was announced in Weston v. Charleston, 2 Pet. 449, where it was held that taxes upon the stock of the United States levied by one of the municipal corporations of South Carolina were

> invalid. From that time no one has questioned the immunity of national securities from state taxation. It may well be doubted whether Congress has the power to confer upon the States the right to tax obligations of the United States. However, this may be, Congress has never yet attempted to confer such a right. Until the time of the Civil War it was not thought to be necessary to express the constitutional prohibition in an act of Congress. But on the occasion of authorizing the issue of Treasury notes it was enacted that "all stocks, bonds, and other securities of the United States held by individuals, corporations, or associations within the United States shall be exempt from taxation by or under state authority." Act of February 25, 1862, 12 Stat. at Large, 346.

See, also, Northwestern Mutual Life Insurance Co. v. State of Wisconsin, 274 U.S. 136, 140-141, 72 L.Ed. 202, 48 S.Ct. 55 (1927) (tax by state on interest income from U.S. bonds), Weston v. City Council of Charleston, 27 U.S. 449, 467,

2 Pet. 449, 7 L.Ed. 481 (1829) (state tax on interest income from United States stock).

When this Court, beginning in the mid-1930's began to sweep away the traditional view that under the Commerce Clause interstate commerce could not be taxed at all, and that the Commerce Clause created an area of trade free of State taxation, it did not leave commerce wholly unprotected from the undue burdens of State taxation. Since the 1930's the fiscal position of some state treasuries has become precarious and Minnesota is one such state. But, at least in the absence of Congressional authorization, the States are still not free to tax commerce at will.

Minnesota has interpreted language in some of this Court's opinions so broadly that no restrictions at all remain on the power of the States to tax commerce. In (1) defining its business as "local" and, (2) expressly approving a state income tax on United States interest obligations despite 31 U.S.C. §742, the Minnesota Court has misconstrued this Court's opinion. The taxation of income from Federal obligations is of major fiscal importance to businesses such as that of Petitioner, to the Federal government and to the States.

CONCLUSION

For the reasons stated, the Petitioner respectfully prays that this

Honorable Court issue a Writ of Certiorari to review the judgment of the Minnesota Supreme Court.

Respectfully submitted,

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